

specified in §782.5(a), such as Department of Energy contractors including contractors operating government-owned facilities, the communication shall not be considered a claim within the meaning of §782.5 until it meets the requirements of that section.

PART 783—WAIVER OF PATENT RIGHTS

Sec.

783.1 Waiver.

783.2 Limitations.

AUTHORITY: Secs. 152, 161, 68 Stat. 944, 948, as amended; (42 U.S.C. 2182, 2201).

SOURCE: 41 FR 56784, Dec. 30, 1976, unless otherwise noted.

§783.1 Waiver.

The Department of Energy, hereinafter “DOE”, waives its rights under section 152 of the Atomic Energy Act of 1954 (66 Stat. 944) with respect to inventions and discoveries resulting from the use of the following materials and services:

(a) Source materials, special nuclear materials, and heavy water distributed by DOE in accordance with the “Schedules of Base Charges for Materials Sold or Leased by DOE for Use in Private Atomic Energy Development and Base Prices Which DOE Will Pay for Certain Products From Private Reactors.”

(b) Radioactive and stable isotopes, irradiation services (this waiver does not include inventions or discoveries made by DOE or DOE contractor personnel in the course of or in connection with the performance of an irradiation service), and radioactive material resulting from the performance of an irradiation service sold or distributed by DOE in accordance with the prices and charges established by:

(1) Oak Ridge National Laboratory Inventory and Price List of electromagnetically enriched and other stable isotopes.

(2) Oak Ridge National Laboratory Catalog and Price List of radioisotopes, special materials, and services.

(3) Idaho National Engineering Laboratory Catalog of Price and charges on irradiation services at the materials testing reactor. The waiver does include inventions or discoveries made

by sponsor personnel in the course of their use of the Gamma Irradiation Facility at the Idaho National Engineering Laboratory.

(4) Argonne National Laboratory schedule of charges for irradiation services at its irradiation facilities.

(5) Brookhaven National Laboratory schedule of prices and charges for irradiation services and radioisotopes.

§783.2 Limitations.

(a) Except with regard to the use of the Gamma facility at the Idaho National Engineering Laboratory, nothing contained in this part shall be deemed to waive any rights in inventions or discoveries where a person or a group of persons acting on behalf of the person requesting the irradiation service works at the DOE facility in connection with the irradiation service. In such event, special arrangements are made.

(b) Nothing contained in this part shall be construed to affect the provisions of any written agreement to which DOE has or may become a party.

PART 784—PATENT WAIVER REGULATION

Sec.

784.1 Scope and applicability.

784.2 Definitions.

784.3 Policy.

784.4 Advance waiver.

784.5 Waiver of identified inventions.

784.6 National security considerations for waiver of certain sensitive inventions.

784.7 Class waiver.

784.8 Procedures.

784.9 Content of waiver requests.

784.10 Record of waiver determinations.

784.11 Bases for granting waivers.

784.12 Terms and conditions of waivers.

784.13 Effective dates.

AUTHORITY: 42 U.S.C. 7151; 42 U.S.C. 5908; 42 U.S.C. 2182; 35 U.S.C. 202 and 210; 42 U.S.C. 7261a.

SOURCE: 61 FR 36614, July 12, 1996, unless otherwise noted.

§784.1 Scope and applicability.

(a) This part states the policy and establishes the procedures, terms and conditions governing waiver of the Government's rights in inventions

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§ 784.3

made under contracts, grants, agreements, understandings or other arrangements with the Department of Energy (DOE).

(b) This part applies to all inventions conceived or first actually reduced to practice in the course of or under any contract, grant, agreement, understanding, or other arrangement with or for the benefit of DOE (including any subcontract, subgrant, or subagreement), the patent rights disposition of which is governed by section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182, or section 9 of the Federal Non-nuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908. In funding agreements with nonprofit organizations or small business firms, when title or other rights are reserved to the Government under the authority of 35 U.S.C. 202(a), this part will apply to any waiver of such rights. The patent waiver provisions in this part supersede the patent waiver regulations previously included with patent regulations at 41 CFR part 9-9.100.

§ 784.2 Definitions.

As used in this part:

Contract means procurement contracts, grants, agreements, understandings and other arrangements (including Cooperative Research and Development Agreements [CRADAs], Work for Others and User Facility agreements, which includes research, development, or demonstration work, and includes any assignment or substitution of the parties, entered into, with, or for the benefit of DOE.

Contractor means entities performing under contracts as defined above.

Patent Counsel means the DOE Patent Counsel assisting the contracting activity.

§ 784.3 Policy.

(a) Section 6 of Public Law 96-517 (the Bayh-Dole patent and trademark amendments of 1980), as amended, as codified at 35 U.S.C. 200-212, provides that title to inventions conceived or first actually reduced to practice in the course of or under any contract, grant, agreement, understanding, or other arrangement entered into with or for the benefit of the Department of Energy (DOE) vests in the United States, ex-

cept where 35 U.S.C. 202 provides otherwise for nonprofit organizations or small business firms. However, where title to such inventions vests in the United States, the Secretary of Energy (hereinafter Secretary) or designee may waive all or any part of the rights of the United States, subject to required terms and conditions, with respect to any invention or class of inventions made or which may be made by any person or class of persons in the course of or under any contract of DOE if it is determined that the interests of the United States and the general public will best be served by such waiver. In making such determinations, the Secretary or designee shall have the following objectives:

(1) Making the benefits of the energy research, development, and demonstration program widely available to the public in the shortest practicable time;

(2) Promoting the commercial utilization of such inventions;

(3) Encouraging participation by private persons in DOE's energy research, development, and demonstration programs; and

(4) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the anti-trust laws.

(b) If it is not possible to attain the objectives in paragraphs (a)(1) through (4) immediately and simultaneously for any specific waiver determination, the Secretary or designee will seek to reconcile these objectives in light of the overall purposes of the DOE patent waiver policy, as set forth in section 152 of the Atomic Energy Act of 1954, 42 U.S.C. 2182, section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908, Public Law 99-661, 42 U.S.C. 7261a, and, where not inconsistent therewith, the Presidential Memorandum to the Heads of Executive Departments and Agencies on Government Patent Policy issued February 18, 1983 and Executive Order No. 12591 issued April 10, 1987.

(c) The policy set forth in this section is applicable to all types of contracts as defined in § 784.2 of this part.